COURT OF APPEAL FOR THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT, DIVISION THREE

THE CITY OF GARDEN GROVE, a municipal corporation, Petitioner, v. SUPERIOR COURT OF ORANGE COUNTY, Respondent, FELIX KHA, Real Party in Interest.	Civil No. G036250 (Superior Court No. 2200677)

REAL PARTY IN INTEREST'S REPLY TO AMICUS CURIE BRIEF OF POLICE ASSOCIATIONS

SEEKING REVIEW OF THE ORDER OF THE SUPERIOR COURT

OF THE COUNTY OF ORANGE

THE HONORABLE LINDA S. MARKS PRESIDING

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Federal Cases

State Cases

Federal Statutes

INTRODUCTION

Ten years after opposing the passage of Proposition 215, amici curiae California State Sheriffs' Association, the California Police Chiefs' Association and the California Peace Officers' Association (collectively "the police associations") do not wish to return medical marijuana to qualified patients. The arguments advanced by the police associations mirror those of Petitioner City of Garden Grove ("Garden Grove") and suffer from the same defects. Most fundamentally, the Legislature has declared that qualified patients "may possess" specified quantities of marijuana and medical marijuana patients are only asking that courts enforce this. The police associations' brief reveals that law enforcement needs clarification of the state's medical marijuana laws. Affirmance of the superior court's order will let law enforcement know that they should not take the legally possessed medicine of qualified patients and reduce the burden this places on the courts.

I. KHA DID NOT COMMIT ANY STATE LAW CRIME BY TRANSPORTING HIS MEDICINE IN A MOTOR VEHICLE

The police associations first contend that the Garden Grove Police were justified in charging Real Party in Interest Felix Kha ("Kha") with possession of less than an ounce of marijuana in a motor vehicle and seizing his medicine because the Compassionate Use Act does not expressly provide a defense to this. Overlooked by the police associations in making this argument is that the Vehicle

Code Section with which Kha was charged, Vehicle Code § 23222(b), contains an exception to the offense of possession of marijuana in a motor vehicle where the possession of the marijuana is "authorized by law."[1] Because the Legislature has established that qualified patients, like Kha, "may possess" eight ounces of dried marijuana (Health & Saf. Code § 11362.77, subd. (a); *People v. Wright* (2006) 40 Cal.4th 81, 97), Kha's possession of the approximately three grams of marijuana at issue was authorized by law and he did not violate Vehicle Code Section 23222.

Furthermore, this straightforward interpretation of the Vehicle Code in conjunction with the state's medical marijuana laws is consistent with the legislative intent. In interpreting these laws, this Court is guided by the following maxims:

> As in any case involving statutory interpretation, [the court's] fundamental task . . . is to determine the Legislature's intent so as to effectuate the law's purpose. [Citation.] [The court must] begin by examining the statute's words, giving them a plain and commonsense meaning. [Citation.] [The court does] not, however, consider the statutory language "in isolation." [Citation.] Rather, [the court must] look to "the entire substance of the statute . . . in order to determine the scope and purpose of the provision. . . . [Citation.]" [Citation.] That is, [the court should] construe the words in question "'in context, keeping in mind the nature and obvious purpose of the statute. . . .' [Citation.]" [Citation.] [The court] must harmonize "the various parts

[1] Vehicle Code § 23222(b) provides in pertinent part: "(b) Except as authorized by law, every person who possesses, while driving a motor vehicle upon a highway or on lands, as described in subdivision (b) of Section 23220, not more than one avoirdupois ounce of marijuana, other than concentrated cannabis as defined by Section 11006.5 of the Health and Safety Code, is guilty of a misdemeanor and shall be punished by a fine of not more than one hundred dollars ($100)."

> of a statutory enactment . . . by considering the particular clause or section in the context of the statutory framework as a whole." [Citations.]'"

(*People v. Harris* (2006) 145 Cal.App.4th 1456, 52 Cal.Rptr.3d 577, 581 [quoting *In re Reeves* (2005) 35 Cal.4th 765, 783].)

Guided by these principles, it is clear that Kha should not have been cited for a violation of the Vehicle Code. In *Wright, supra*, the Court recognized that the purpose of the Compassionate Use Act is three-fold:

> (A) To ensure that seriously ill Californians have the right to obtain and use marijuana for medical purposes where that medical use is deemed appropriate and has been recommended by a physician…. [¶] (B) To ensure that patients and their primary caregivers who obtain and use marijuana for medical purposes upon the recommendation of a physician are not subject to criminal prosecution or sanction. [¶] (C) To encourage the federal and state governments to implement a plan to provide for the safe and affordable distribution of marijuana to all patients in medical need of marijuana."

(*Wright, supra*, 40 Cal.4th at p. 89 [quoting Health & Saf. Code § 11362.5, subd. (b)(1)].) To effectuate this legislative intent and "promote the fair and orderly implementation of the [Compassionate Use Act]," the Legislature exempted medical marijuana patients from criminal liability for transportation of marijuana generally, and it provided for patient collectives and cooperatives, which are exempted from the state laws forbidding marijuana sales. (See Health & Saf. Code §§ 11362.765 & 11362.775; Stats, 2003, C. 875 (S.B. 420), Section 1, subd. (c); *People v. Urziceanu* (2005) 132 Cal.App.4th 747, 783 & 785 [noting that the

Medical Marijuana Program Act is the Legislature's initial response to voter's directive to provide mechanism for the safe and affordable distribution of marijuana to the seriously ill; "Its specific itemization of the marijuana sales law indicates it contemplates the formation and operation of medical marijuana cooperatives that would receive reimbursement for marijuana and the services provided in conjunction with the provision of that marijuana.".) It "would result in absurd consequences which the Legislature did not intend" (cf. *Harris, supra*, 52 Cal.Rptr.3d at pp. 581-582 [quotation omitted]) for patients to be legally able to obtain marijuana through patient collectives and cooperatives, but not be legally able to drive their medicine home. (Cf. *People v. Trippet* (1997) 56 Cal.App.4th 1532, 1550 ["practical realities dictate that there be *some* leeway in applying section 11360 in cases where a Proposition 215 defense is asserted to companion charges. The results might otherwise be absurd."].)

Conspicuously absent from the police associations' brief is any mention of the California Supreme Court's recent decision in *People v. Wright, supra*. In *Wright*, the Court noted the initial disagreement in the courts of appeal over whether the Compassionate Use Act affords a defense to qualified patients for transportation in a motor vehicle. (Compare *Trippet, supra* [approving defense] with *People v. Young* (2001) 92 Cal.App.4th 229 [denying defense].) In response, "the Legislature stepped in and addressed the issue directly by enacting the

[Medical Marijuana Program Act] in which it extended a [Compassionate Use Act] defense to a charge of transporting marijuana where certain conditions are met." (*Wright, supra*, 40 Cal.4th at p. 92 [citing Health & Saf. Code § 11362.765 et seq.].) It would conflict with this legislative intent not to afford qualified patients a defense for the misdemeanor offense of transporting marijuana in a motor vehicle where the Legislature responded to this precise issue by exempting medical marijuana patients from the prohibition on transporting marijuana generally.[2]

II. KHA LAWFULLY POSSESSED THE MEDICAL MARIJUANA AT ISSUE AND IS ENTITLED TO ITS RETURN

Nor does the fact that Kha told the officer who stopped him that he obtained his medicine from a lab in Long Beach deprive him of the right to its return. The source of the medical marijuana is irrelevant. Because the right to regain possession of one's property is a substantial right (*Ensoniq Corp. v. Superior Court* (1998) 65 Cal.App.4th 1537, 1546; *People v. Lamonte* (1997) 53 Cal.App.4th 544, 549 (*Lamonte*), a court must order the return of property seized by the police, unless it is contraband or statutory authority exists authorizing its forfeiture (*Lamonte, supra*, 53 Cal.App.4th at p. 549). "Contraband" is not defined by the method by which the property was obtained; rather, as the court explained in

[2] It bears emphasizing that Kha was not charged with driving under the influence of marijuana. This remains a crime in California, despite the state's medical marijuana laws, since the Legislature has not exempted them from this offense. The police remain free to charge patients with this offense when there is probable cause that they have done this.

Lamonte, courts have defined "contraband" as "goods or merchandise whose importation, exportation, or possession is forbidden. [Citation.]" (*Id.* at p. 552.) Lawfully possessed medical marijuana is most assuredly not contraband under this definition, since the electorate has declared that qualified patients have "the right to obtain and use marijuana for medical purposes" (Health & Saf. Code § 11362.5, subd. (b)(1)) and the Legislature has since affirmed that a qualified patient "may possess" at least eight ounces of dried marijuana (Health & Saf. Code § 11362.77, subd. (a); *Wright, supra,* 40 Cal.4th at p. 97). Because the marijuana at issue is not contraband, it must be returned. (Cf. *Lamonte,* 53 Cal.App.4th at p. 549 ["Continued official retention of legal property with no further criminal action pending violates the owner's due process rights"]; *Stern v. Superior Court* (1946) 76 Cal.App.2d 772, 784 [Penal Code section 1540 "does not put the burden on the citizen of suing to get the property back. It makes it the duty of the magistrate to see to its restoration by a mandatory 'must.' There is no discretion about it."].)[3]

[3] This Court's analysis in *Chavez v. Superior Court* (2004) 123 Cal.App.4th 104, is consistent with this approach. Like the Court's pronouncement in *People v. Mower* (2002) 28 Cal.4th 457, that "[p]robable cause depends on all of the surrounding facts [citations], including those that reveal a person's status as a qualified patient or primary caregiver under section 11362.5(d) [of the Act]" (*id.* at pp. 468-469), this Court declared in *Chavez* that "[b]ecause the Compassionate Use Act makes no provision for return of marijuana, we are compelled to apply the existing statutes. . . ." (*Chavez, supra*, 123 Cal.App.4th at pp.108 fn. 2 & 111; see also *Harris*, *supra*, 52 Cal.Rptr.3d at p. 581 ["We must harmonize 'the various parts of a statutory enactment . . . by considering the particular clause or section in the contest of the statutory framework as a whole."] [quotation omitted].).

Furthermore, property that is lawfully possessed is not transformed into contraband by virtue of having been involved in the commission of a crime. (*Lamonte, supra,* 53 Cal.App.4th at pp. 552-553; *Porno, Inc. v.. Municipal Court* (1973) 33 Cal.App.3d 122, 124-125 [holding that movie projector used to facilitate obscenity crime is not contraband because it is not illegal to possess projector].) In *Lamonte, supra,* police seized several credit cards and identity cards with stolen identity numbers, as well as several computers and computer equipment. After the defendant pled guilty to one count of second degree burglary and was sentenced, he moved for the return of the computers and the People objected because the computers had been used by the defendant to steal identity information. The trial court concluded the use of the computers to obtain stolen identity information effectively transformed the otherwise lawfully possessed computers into contraband. The Court of Appeal reversed, holding that property lawfully possessed did not become contraband simply because it was used as an instrumentality in a crime. (*Lamonte,* supra, 53 Cal.App.4th at p. 553.) The court concluded: "Although [the defendant] may have used the equipment in committing crimes, the equipment itself is not illegal to possess.... The court may

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Considered in the integrated fashion, the statutory framework requires the return of Kha's medicine.

not refuse to return legal property to a convicted person to deter possible future crime." (*Ibid.*) As in *Lamonte*, Kha is entitled to the return of his property.[4]

In any event, although this Court need not decide the issue, there are numerous scenarios where Kha could have legally obtained his medical marijuana from a lab in Long Beach. In *People v. Urziceanu* (2005) 132 Cal.App.4th 747, 33 Cal.Rptr.2d 859, 881), the court noted that the Medical Marijuana Program Act represents the Legislature's initial response to voters' directive to provide mechanisms for the safe and affordable distribution of marijuana to the seriously ill. (*Id.* at p. 783.) "Its specific itemization of the marijuana sales law indicates it contemplates the formation and operation of medical marijuana cooperatives that

[4] Without attempting to distinguish *Lamonte,* the police associations point to *People v. Superior Court of Los Angeles (Shayan)* (1993) 21 Cal.App.4th 621, for the proposition that marijuana which was unlawfully obtained cannot later be lawfully possessed. (See Amicus Curiae Brief of Police Associations at pp. 11-12.) In *Shayan,* however, which involved the possession of stereo equipment with missing serial numbers, the court noted that the property was no longer "contraband" and, therefore, returnable after serial numbers were affixed to the equipment. (See *Shayan, supra*, 21 Cal.App.4th at p. 629.) This supports, rather than undermines, Kha's contention that the past history of the property is irrelevant to the inquiry whether it should be returned. Furthermore, unlike the crime at issue here, the crime at issue in *Shayan*, "possession [of] any personal property from which the manufacturer's serial number . . . has been removed" (Penal Code § 537e), was defined by the character of the property. It was, thus, incumbent upon the superior court to consider this before ordering its return. Vehicle Code Section 23222(b), by sharp contrast, makes it an offense to possess marijuana in a motor vehicle without regard to the character of the marijuana. The dispositive question for such offense involves the status of the defendant -- whether he is a qualified patient -- not the character of the property.

would receive reimbursement for marijuana and the services provided in conjunction with the provision of that marijuana." (*Id.* at p. 785.) Kha may well have been a member of a patient collective where qualified patients associated in Long Beach to cultivate marijuana for each other, which he referred to as a "lab." Alternatively, the person designated as Kha's primary caregiver may have cultivated marijuana for him in that facility. This is likely why the Supreme Court noted in *Wright, supra,* that the defendant had purchased the marijuana he was transporting in his truck that morning, yet it still found that he was entitled to present a Compassionate Use Act defense. (See *Wright, supra*, 40 Cal.4th at pp. 88 & 97.) As the Attorney General correctly observes, the police have failed to make a clear case that the Superior Court abused its discretion in finding that there was no probable cause to believe that Kha had committed any state offense. (See Amicus Curiae Brief of the Attorney General at p. 10 fn. 7 (citing *City and County of San Francisco v. State of California* (2005) 128 Cal.App.4th 1030, 1037).)

III. LAWFULLY POSSESSED MEDICAL MARIJUANA IS NOT SUBJECT TO FORFEITURE UNDER STATE LAW

Next, to overcome Kha's entitlement to the return of his medical marijuana under state law, the police associations contend that the forfeiture provisions of state law, which require the forfeiture of property not "lawfully possessed" by the defendant, necessarily incorporate federal law, which renders marijuana illegal for all purposes. (See Amicus Curiae Brief of Police Associations at pp. 12-14 & 16.)

Not only is this contention flatly contradicted by the Legislature's pronouncement that a qualified patient "may possess" eight ounces of dried marijuana per patient (Health & Saf. Code § 11362.77, subd. (a)), but courts do not generally incorporate federal law into state law, absent clear direction from the Legislature that they do so. For instance, in *Farmers Brothers Coffee v. Workers' Compensation Appeals Board* (2005) 133 Cal.App.4th 533, the court held that undocumented aliens are entitled to workers' compensation benefits under state law, notwithstanding the fact that their very presence in California is illegal under federal law. (*Farmers Brothers Coffee, supra*, 133 Cal.App.4th at pp. 542-543; accord *Murillo v. Rite Stuff Foods, Inc.* (1998) 65 Cal.App.4th 833.) The employer in *Farmers Brothers* contended that, by including a reference to the phrase "unlawfully employed" in defining an "employee" entitled to workers' compensation benefits, the Legislature intended to exclude illegal aliens. (*Id.* at p. 542.) After noting the absence of any reference to federal law in the state statute, the court rejected the employer's attempt to incorporate federal immigration law into state law, reasoning as follows:

> Petitioner suggests that by including the phrase *unlawfully employed*, the Legislature intended to exclude *illegal* employees from the definition [of those entitled to receive workers' compensation benefits]. . . .
>
> There is no language in the statute to indicate that the Legislature intended "unlawfully employed" to have such a complex meaning or to incorporate federal immigration law, and our task in construing the statute is simply "to ascertain and declare what is in

> terms or in substance contained therein, not to insert what has been omitted, or to omit what has been inserted. . . ."
>
> * * *
>
> We therefore decline petitioner's suggestion that we insert such a policy into the statute.

(*Id.* at pp. 542-543 [quoting Code Civ. Proc., § 1858].) The state law provisions for the forfeiture of unlawfully possessed property should not be construed as incorporating federal law in any event. This is especially so where, as here, state law reflects a conscious decision by the electorate to tread a different path.

IV. LAW ENFORCEMENT OFFICERS WHO RETURN MEDICAL MARIJUANA PURSUANT TO A COURT ORDER ARE IMMUNE FROM LIABILITY UNDER FEDERAL LAW

Turning to federal law, which the police associations seem to prefer,[5] federal law does not prevent the court from ordering the return of Kha's property. The immunity provision of the Controlled Substances Act ("CSA") broadly provides: "[N]o civil or criminal liability shall be imposed by virtue of [the CSA] . . . upon any duly authorized officer of any State, territory, political subdivision thereof, the District of Columbia, or any possession of the United States, who shall be lawfully engaged in the enforcement of any law or municipal ordinance relating to controlled substances." (21 U.S.C. § 885, subd. (d).) Health and Safety Code

[5] All three of the police associations stated their opposition to Proposition 215 in the ballot pamphlet arguments against it. (See http://vote96.ss.ca.gov/BP/215noarg.htm.)

Section 11362.77(a) establishes that a qualified patient "may possess" specified quantities of marijuana for personal medical use and a court "enforces" this law relating to controlled substances when it orders the return of medical marijuana. It is, thus, immune from the criminal provisions of the CSA under Section 885(d). Next in the chain is the police officer who must carry out this order and release the property. Because the court's order has the force and effect of law (see Code of Civ. Proc. §§ 128 & 177; Amicus Curiae Brief of the Attorney General at p. 7 & fn. 4), an officer who executes such order is enforcing a law relating to controlled substances and, under the plain language of Section 885(d), he is immune.

To overcome this straightforward application of Section 885(d) to the facts of this case, the police associations contend that this statute only applies to the enforcement of state laws that are "consistent with federal law." (Amicus Curiae Brief of the Police Associations at p. 21 [quoting *United States v. Rosenthal* (D. Cal. 2003) 266 F.Supp.2d 1068, 1078, *aff'd in part by United States v. Rosenthal* (9th Cir. 2006) 454 F.3d 943, 948].) Contrary to the police associations' representation, this statement by the district court in *Rosenthal* was not affirmed by the Court of Appeal. Quite the opposite, the Ninth Circuit implicitly rejected it. Rather than adopt the district court's analysis of the immunity provision of the CSA in full, the Ninth Circuit "independently reviewed" the issue and issued its own reasoning. (*Rosenthal, supra*, 454 F.3d at pp. 947-948.) While the Ninth

Circuit agreed with the district court's ultimate conclusion that Rosenthal was not entitled to immunity under Section 885(d) for cultivating marijuana for distribution through dispensaries (*id.* at p. 948), its reasoning departed from that of the district court when it elected not to include the district court's reasoning that the state or municipal law at issue must itself be consistent with federal law. (See *id.* at p.p. 947-948.) To the contrary, the Ninth Circuit cited *State v. Kama* (Or. Ct. App. 2002) 178 Or. App. 561, 39 P.3d 866, with approval, and that was a case involving the application of immunity to police under Section 885(d) for returning medical marijuana to patients. (See *id.* at p. 948.) This case is analogous to Kama, since the court order for the return of marijuana supplies the state law relating to controlled substances that the police are enforcing. As in *Kama*, this Court should affirm the order for the return of the medical marijuana.

Even if it were not for the immunity provided by Section 885(d), law enforcement officers who return medical marijuana pursuant to a court order would *still* be immune from suit for doing so. For instance, in *United States v. Lanier* (1997) 520 U.S. 259, the United States Supreme Court held that a public official performing official tasks has "qualified immunity" from suit, which includes criminal actions, unless the law was clearly established that his conduct was illegal. (See *id.* at pp. 270-271.) Similarly, in *Nardone v. United States* (1937) 302 U.S. 379, the Court established the doctrine of implied "governmental exception"

to criminal statutes, which requires courts to construe statutes not expressly including government officials as excluding them. (*Id.* at p. 384; accord *United States v. Mack*, 164 F.3d 467, 472 (9th Cir. 1999); see also *Regents of the University of California v. Doe* (1997) 519 U.S. 425, 429 [holding that Eleventh Amendment bars suits against state officials carrying out official responsibilities where "the state is the real, substantial party in interest"]; *Blake v. Kline*, 612 F.2d 718, 725 (3d Cir. 1979) ["The primary purpose of the eleventh amendment is to assure that the federal courts do not interfere with a state's public policy and its administration of internal public affairs"] [citing *In re Ayers*, 123 U.S. 443, 505 (1887)].) Courts are very protective of public officials performing official tasks and several immunity provisions would shield them from a highly improbable federal prosecution for returning medical marijuana pursuant to a court order. This Court can provide the police associations such comfort, since it has the authority to "render binding judicial decisions that rest on their interpretations of federal law." (*ASARCO, Inc. v. Kadish* (1989) 490 U.S. 605, 617.)

V. FEDERAL LAW DOES NOT PREEMPT STATE LAW

Harmonized in this fashion, there is no "positive conflict" between state and federal law and, therefore, no preemption. (Cf. 21 U.S.C. § 903 [providing that states are free to enact any law that does not create a positive conflict with the CSA]; see also *Bronco Wine Co. v. Jolly* (2004) 33 Cal.4th 943, 957 [holding that

courts must "start with the assumption that the historic police powers of the States were not to be superseded by the Federal Act unless that was the clear and manifest purpose of Congress"]; *Jones v. Rath Packing Co.* (1977) 430 U.S. 519, 525 ["This assumption provides assurance that 'the federal-state balance' [citation] will not be disturbed unintentionally by Congress or unnecessarily by the courts."].) Whereas the Supreme Court has established that federal officials may enforce the federal prohibition on marijuana for all purposes if they elect to do this (*Gonzales v. Raich* (2005) 125 S.Ct. 2195), no court has held that state law cannot coexist with this federal law and that a state's medical marijuana laws are preempted. Such coexistence is precisely what our federalist system of government envisions. (Cf. *Ponzi v. Fessenden* (1922) 258 U.S. 254, 257 [describing doctrine of dual sovereignty]; see also *People v. Boultinghouse* (2006) 36 Cal.Rptr.3d 244, 248 (*Boultinghouse*) ["Congress has chosen to take a deferential approach to the states in the area of drug enforcement."].)

VI. A DECISION IN KHA'S FAVOR WILL CONSERVE LAW ENFORCEMENT RESOURCES, AS THE VOTRES INTENDED

Lastly, the police associations complain that a decision in Kha's favor will undermine Departmental authority and morale because law enforcement agencies would be "faced with the dilemma of informing its officers which laws are to be followed and which are to be ignored with impunity." (Amicus Curiae Brief of the Police Associations at p. 24.) This is the crux of the issue. When the California

electorate enacted the Compassionate Use Act in 1996, they declared that its purpose was to "ensure that seriously ill Californians have the right to obtain and use marijuana for medical purposes where that medical use is deemed appropriate and has been recommended by a physician." (Health & Saf. Code § 11362.5, subd. (b)(1).) In the years that followed, "reports from across the state . . . revealed problems and uncertainties in the act that have impeded the ability of law enforcement officers to enforce its provisions as the voters intended and, therefore, prevented qualified patients and designated primary caregivers from obtaining the protections afforded by the act." (Senate Bill 420, Stats. 2003 c.875, § 1(a)(2).) Thus, "to avoid unnecessary arrest and prosecution of these individuals and provide needed guidance to law enforcement officers," the Legislature established that patients "may possess" specified quantities of marijuana. (Senate Bill 420, Stats. 2003 c.875, § 1(b)(2); Health & Saf. Code § 11362.77, subd. (a).) Despite this clarification, law enforcement officers continue to seize marijuana from patients, and cite them for marijuana related offenses, even when they have absolutely no reason to believe that the patient committed any state offense. Although charges in these case are invariably dismissed at or before the first court appearance, the police's actions place unnecessary burdens on local courts and prosecutors. A decision in Kha's favor will provide much needed guidance to law enforcement that they should not seize marijuana from qualified patients who

present facially valid documentation of their status as such.[6] This will focus the expenditure of law enforcement resources on conduct deemed criminal by California law, as the voters intended.

CONCLUSION

For the foregoing reasons, this Court should deny the instant Petition.

DATED: February 3, 2007 Respectfully submitted,

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JOSEPH D. ELFORD

Counsel for Real Party in Interest
FELIX KHA

[6] It bears noting that the state's largest law enforcement agency, the California Highway Patrol, has adopted precisely such policy, which it has disseminated to all of its officers. (See Request for Judicial Notice at 1-18, HPM 100.69, Section 7(c)(3)(e) ["If an individual claims [a medical marijuana defense] and possess . . . a written recommendation from a licensed physician, officers should use sound professional judgment to determine the validity of the person's medical claim. Based on the totality of the circumstances present, if the officer reasonably believes the medical claim is valid, and the individual is within the state/local limits (whichever applies) *the individual is to be released and the marijuana is not to be seized.*"] [emphasis in original].)

CERTIFICATE OF WORD COUNT

The text of this brief consists of 4,658 words as counted by the word processing program used to generate the brief.

DATED: January 3, 2007 Respectfully submitted,

_____
JOSEPH D. ELFORD

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DECLARATION OF SERVICE

I am a resident of the State of California and over the age of eighteen years. My business address is 1322 Webster St., Suite 402, Oakland, CA 94612. On February 5, 2007, I served the within document(s):

REAL PARTY IN INTEREST'S ANSWER TO AMICUS CURIAE BRIEF OF POLICE ASSOCIATIONS

Via first-class mail to:

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I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on this __ day of February, 2007, in Oakland, California.

_____
JOSEPH D. ELFORD